

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Section 63.71 Application of Enhanced)
Communications of Northern New England Inc.)
d/b/a FairPoint Long Distance – NNE and FairPoint)
Long Distance to Discontinue Domestic)
Telecommunications Services)

WC Docket No. 09-1
Comp. Pol. File No. 894

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ORDER

Adopted: January 29, 2009

Released: January 29, 2009

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau grants the request of Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance – NNE (in Maine and New Hampshire) and FairPoint Long Distance (in Vermont) (FairPoint or Applicant) for authority to discontinue Personal Toll Free Service (PTFS) in Maine, New Hampshire and Vermont (the service areas) on or after January 30, 2009. Section 63.71(c) of the Federal Communications Commission's (Commission) rules states that a carrier's discontinuance application shall be granted automatically on the thirty-first day after the Commission releases public notice of the filing.¹ The thirty-one day period allows the Commission to determine whether affected customers have received sufficient notice and have available reasonable alternatives to the service to be discontinued. Because the purpose and intent of the Commission's notice requirements have been met in this particular case, we grant FairPoint authority to discontinue PTFS. We also grant FairPoint a waiver to permit it to discontinue PTFS before the expiration of the thirty-one day period.

II. BACKGROUND

2. On December 12, 2008, FairPoint filed a discontinuance application with the Commission seeking authority to terminate PTFS to customers in Maine, New Hampshire and Vermont.² In its application, FairPoint seeks to discontinue PTFS on or after January 30, 2009, and indicates that it notified all affected customers of the proposed discontinuance on December 11, 2008. FairPoint maintains that it offers alternative toll-free calling services and that comparable toll-free calling plans are offered by other carriers in the affected service areas at competitive prices. Specifically, FairPoint states in its customer letter that, as an alternative, it is offering its Call Home Calling Card, which provides a means of toll-free calling at the same rate as PTFS.

¹ See 47 C.F.R. § 63.71(c).

² FairPoint explains that this service allows customers to receive a private authorization code and a toll free number that terminates to an exchange access line.

3. Public notice of FairPoint's discontinuance application was released on January 6, 2009, with comments and reply comments due on January 21, 2009, and January 26, 2009, respectively.³ In addition to seeking comment on the discontinuance generally, the Bureau sought specific comment on the question of whether to permit FairPoint to discontinue in less than thirty-one days. Although customers were notified by FairPoint of the planned discontinuance on December 11, 2008, automatic grant of the application would occur no sooner than February 5, 2009, under section 63.71 of the Commission's rules.

4. FairPoint indicates that PTFS previously had been offered in the affected service areas by subsidiaries of Verizon Communications Inc. prior to the acquisition of these exchanges by FairPoint's parent company, FairPoint Communications, Inc.⁴ FairPoint asserts, however, that as a technical matter this service can only be supported by Verizon's network, and that a cutover from Verizon's network to FairPoint's network is scheduled to occur on or about January 30, 2009. FairPoint maintains that on or after that time, FairPoint will be unable to support PTFS. FairPoint states that it is regulated as a non-dominant carrier with respect to the service it seeks authority to discontinue and notes that it has submitted a copy of its application to the Governors and public utility commissions of all of the affected states. Furthermore, FairPoint asserts that the present and future public convenience and necessity will not be adversely affected by the proposed termination of service on January 30, 2009, because customers have been provided with adequate notice and the public has access to comparable services at competitive prices.

5. Pursuant to section 1.3 of the Commission's rules, the Commission may grant a waiver of its rules upon a showing of "good cause."⁵ Section 1.3 thus allows the Commission to grant a waiver if special circumstances warrant a departure from the general rule, and that departure serves the public interest.⁶ We find that due to the special circumstances present here, departure from the general rule is warranted, and this departure serves the public interest. This proceeding's comment period closed without the filing of any comments in opposition to the proposed discontinuance of service, or in opposition to FairPoint receiving authority prior to completion of the normal thirty-one day automatic grant period.⁷ Given that FairPoint will have provided its customers with actual notice of its proposed

³ See *Comments Invited on Application of Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance – NNE and FairPoint Long Distance to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 09-1, Comp. Pol. File No. 894, DA 09-10 (rel. Jan. 6, 2009).

⁴ See *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Red 514 (2008) (granting applications for transfer of control in connection with FairPoint's acquisition of Verizon's local exchange assets in Maine, New Hampshire and Vermont).

⁵ 47 C.F.R. § 1.3.

⁶ See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 US 1027 (1972)); see also *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

⁷ The Commission received one late-filed comment on January 27, 2009 from a customer not clearly impacted by the proposed discontinuance. See Letter from The Rev. Dr. and Mrs. David P. and Louise S. Ransom, to Peter Nixon, President, FairPoint Communications and the Federal Communications Commission (filed Jan. 27, 2009) (Ransom Letter). Rev. Dr. and Mrs. Ransom file in opposition to the possible loss of their landline service which they describe as "Verizon Freedom" and they do not comment in opposition to the proposed timing of FairPoint's discontinuance of PTFS.

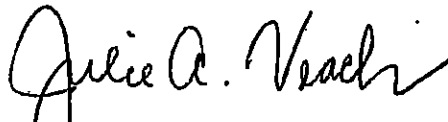
discontinuance almost fifty days prior to its proposed discontinuance, and that public notice for FairPoint's proposed discontinuance was delayed by no fault of the applicant, we find that the purpose and intent of the Commission's notice requirements have been met. In reaching this finding, however, we emphasize that we are accepting and specifically relying on the record in this case including FairPoint's representations regarding timely notice to customers and the availability of alternative services. In this regard, it is particularly important to us that customers have had an opportunity to seek alternative toll-free calling services from FairPoint and from other carriers in the affected areas, and that we have not received any comments from the state public utility commissions or any affected customers in opposition to the proposed discontinuance of FairPoint's PTFS on January 30, 2009.⁸ In other circumstances, we would not necessarily reach the same conclusion.⁹ We therefore find that given the specific circumstances found here, good cause exists for a limited waiver of the Commission's discontinuance requirements, and that waiving section 63.71(c) is in the public interest.

III. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, the application of Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance – NNE (in Maine and New Hampshire) and FairPoint Long Distance (in Vermont) to discontinue domestic telecommunications services IS GRANTED to the extent declared herein, consistent with FairPoint's filed representations in this proceeding.

7. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, section 63.71(c) of the Commission's rules IS WAIVED to the extent necessary to permit FairPoint to discontinue providing service consistent with the terms of its application on January 30, 2009.

FEDERAL COMMUNICATIONS COMMISSION



Julie A. Veach
Deputy Chief
Wireline Competition Bureau

⁸ See *supra* n.7.

⁹ See, e.g., *Rhythms Links Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, Order, NSD File No. W-P-D-523 (Sept. 7, 2001).